

October 8, 2008

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E92C1506**

SANDRA O'REILLY
Code Enforcement Appeal

Location: 26037 & 26041 – 101st Place Southwest, Dockton

Appellant: Sandra O'Reilly
represented by **Richard Clark**
PO Box 766
Snoqualmie, Washington 98065

King County: Department of Development and Environmental Services
represented by **Sheryl Lux**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 205-1525
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:

Department's Final Recommendation:

Examiner's Decision:

Deny the appeal

Grant the appeal in part (violation (c)); Deny the appeal of remaining allegations and allow additional time to apply for building permits
Grant the appeal in part; Deny in part, and allow additional time to submit building permit applications

ISSUES AND TOPICS ADDRESSED:

- Continuation of non-conforming use
- Remodeling residence without building permit
- Re-location of building without permit

SUMMARY OF DECISION:

The property owner's appeal of the Notice of Code Violation for remodeling a residence, relocation of an accessory structure and construction of a garage without required permits is granted in part and denied in part.

EXAMINER PROCEEDINGS:

Hearing opened: September 30, 2008
Hearing closed: September 30, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On May 5, 2006, the King County Department of Development and Environmental Services (DDES) issued a supplemental notice of King County Code violation, civil penalty order, abatement order, notice of lien, duty to notify ("Notice and Order") to Sandra O'Reilly. The property subject to the Notice and Order is located at 26037 101st Place Southwest (Vashon Island) in unincorporated King County. Sandra O'Reilly is the owner of the subject property.

The Notice and Order alleged violation of the King County Code for remodeling a residence; construction, relocation and remodeling an accessory structure into an accessory dwelling unit (ADU); and construction of a detached garage, without required permits and within environmentally critical areas.
2. A timely appeal of the Notice and Order was filed by Sandra O'Reilly and Richard Clark on May 30, 2006. The Statement of Appeal asserts that the Notice of Violation is not sufficiently specific, that work on the property was repair work following a slide, and that no new garage or ADU have been constructed or remodeled since approximately 1991.
3. DDES has withdrawn the allegation of construction of a detached garage without the required permits (allegation 1.(c) of the Notice and Order).
4. A slide occurred on the subject property in 1991. That slide caused the primary residence on the property to be moved off of its foundation and otherwise damaged. In 1992, the Appellant applied to DDES for a building permit to repair the residence. Although the permit was not issued, the Appellant proceeded with the repairs, including removal of mud and debris, leveling and reposting a portion of the pillar and post foundation, repairing the foundation skirt board, replacing the entry door, and replacing the siding on the west side of the house. At the same time, a small addition was made to the house.

A site visit conducted on December 8, 1992 by a DDES Code Enforcement Officer determined that construction was occurring on the residence without a building permit. The Officer posted a stop work order, which was following by a violation letter sent to Ms. O'Reilly. Following receipt of the violation letter, Ms. O'Reilly made application in 1993 for a building permit. That application was denied by the Seattle-King County Department of Public Health (Public Health)

for the reason that the existing drain field system was not in compliance with current code. On September 29, 1994 the building permit application was cancelled by DDES.

A re-inspection of the property was made by a DDES Code Enforcement Officer on June 16, 2005. At a pre-application meeting held at DDES on May 30, 2006, it was determined that the residence is currently occupied. It is uncontroverted that no building permit has been issued for the repair and remodel of the residence during or subsequent to 1991.

5. In response to the current Notice and Order, the Appellant again made application to Public Health for approval of water supply and septic systems serving the residence and an ADU located on the property. Although that application has been denied, it appears from the evidence that the water and septic system serving the residence are likely to be approved if the application for their approval is separated from the application for approval of the septic system that serves the ADU. The Appellant is willing to separate the applications, and the DDES Code Enforcement Officer would recommend that the application for the residence not be held up pending approval of a building permit application for the ADU.
6. A reasonable time to allow the Appellant to submit separate Public Health applications for the primary residence and the ADU, in lieu of the current pending application, is 30 days. A reasonable time to submit a separate building permit application for the primary residence would be 60 days after receipt of Public Health approval of the water supply and waste disposal systems for that residence.
7. An ADU is defined by KCC 21A.06.350 as a separate, complete dwelling unit attached to, contained within, or within a separate structure that is accessory to the primary dwelling unit on the premises. To be a complete dwelling unit, the unit ordinarily contains a kitchen or kitchen facility and bathroom with toilet, lavatory and bathing fixtures.

Accessory living quarters (ALQ) are defined by KCC 21A.06.010 as living quarters in an accessory building for the use of the occupant or persons employed on the premises, or for temporary use of guests of the occupant. Such quarters have no kitchen and are not otherwise used as a separate dwelling unit. There is no restriction in the King County Code that has been cited to the Examiner that restricts bathroom fixtures in an ALQ.
8. The building that is the subject of allegation “(b)” of the Notice and Order has been on the property for over 30 years. It appears that this building was constructed between 1970 and 1976. There is no record of a building permit for this structure.

Chapter 21A.32 of the King County Code contains provisions concerning non-conforming uses. Once created, a non-conformance may be continued in a manner consistent with the provisions of that chapter. However, a non-conformance is limited to a use, structure or other site improvement that was established in compliance with use and development standards in effect at the time of its establishment. In the absence of evidence of the issuance of a building permit for the construction of the ADU in issue, it cannot be found in this proceeding that the existing ADU is a legal non-conforming use. In the absence of such a determination, review by Public Health and DDES of a building permit application and occupancy permit for the structure must evaluate the structure in accordance with current King County Code and Public Health regulations.

(If the structure, when built, had been properly permitted, it appears that the relocation of the same structure on the subject property would be consistent with code provisions that allow for modifications that do not expand an existing non-conformance and do not create a new type of non-conformance.)

9. The subject property is currently zoned RA-2.5. The current minimum lot size in the RA-2.5 zone is 1.75 acres. This parcel is 0.52 acres in size. Under present King County Code provisions, an ALQ could be permitted on the subject property, but an ADU could not.

The use the Appellant currently makes of the structure in issue is for her personal convenience, and to provide additional area for her family and guests when visiting the property. The structure is not used as a rental, or as a residence for unrelated persons.

10. The building that currently exists on the property as an ADU was on the premises at the time of the 1991 landslide. When the landslide occurred, the top of the bluff on which the ADU is located became dangerously close to the unit. As a precautionary measure, the unit was moved by the Appellant further back from the slope, to the location where it currently exists.
11. The construction of the ADU, and its relocation to its present position on the property, were subject to requirements of the King County Code for building permits. It appears that interior renovations to the ADU, which would remove the existing kitchen or kitchen facility, and appropriate restrictions on the use of the structure, limiting its use to the occupants of the residence on the property, or temporary use of guests of the occupants, might qualify the structure for building and occupancy permits as an ALQ. Those permits for the ALQ would require approval by the King County Department of Public Health and DDES.

CONCLUSIONS:

1. The allegation of construction of a detached garage without required permits should be dismissed.
2. The allegation that the residence on the subject property was repaired and remodeled without the required permits should be affirmed and the appeal thereof denied. A reasonable time should be allowed to the Appellant to revise the current Public Health permit application to address the primary residence separately from the ADU on the property. A reasonable time to allow the Appellant to submit the necessary documentation to seek separate approval by Public Health for the residence is 30 days. A reasonable period of time to submit a separate building permit application for the repairs and modifications made to the residence is 60 days from the date the Appellant receives approval from Public Health.
3. A reasonable period of time for the Appellant to seek separate approval of a building permit for the ADU/ALQ on the subject property is 90 days from the date of this decision. If the Appellant receives approval from Public Health, a reasonable time within which to apply to DDES for a separate building permit is 60 days from the receipt of Public Health approval. If the Appellant is unable to obtain approval of the building as an ADU or ALQ, the Appellant should be required to apply for a demolition permit within 60 days of the final denial of the application by Public Health or DDES, and should complete the demolition and removal of the demolition debris within 120 days of the issuance of the demolition permit.

DECISION:

The appeal of the May 5, 2006 Notice and Order is granted in part and denied in part, as follows:

1. The appeal of allegation 1(c), construction of a detached garage without the required permits, is granted, and that allegation is dismissed.

2. The appeal of the allegation of repair and remodel of a residence, including an addition and foundation work, without the required permits, is denied. The Appellant is granted 30 days to apply to Public Health for a separate approval of the water supply and septic systems for the residence, and is granted 60 days from the receipt of approval by Public Health to apply for a separate building permit for the repair and remodel of the residence, and shall provide all additional information requested by Public Health or DDES within the reasonable time periods established by the Department. Failure to do so shall subject the Appellant to the civil penalty set forth in the Notice and Order, beginning on the first day following the expiration of the applicable time period set forth above.
3. The appeal of the allegation of construction, relocation and remodel of an accessory structure without required permits is denied. The Appellant is granted 60 days to separately apply to Public Health for approval of the structure as an ADU or ALQ, and is granted 60 days from the receipt of approval by Public Health to apply to DDES for a separate building permit for the ADU or ALQ. If the Appellant is unable to obtain approvals for the structure, the Appellant shall apply to DDES within 60 days of the denial by Public Health or DDES for a demolition permit for the structure, and shall complete the demolition and removal of demolition debris within 120 days from the issuance of the demolition permit. In the event the Appellant fails to complete the permitting or demolition, as applicable, within the set time periods, the Appellant shall be subject to the penalty set forth in the Notice and Order, commencing on the first day following the expiration of the applicable time period. If the property owner fails to do so, the structure may be abated by King County as set forth in the Notice and Order.

ORDERED this 8th day of October, 2008.

James N. O'Connor
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE SEPTEMBER 30, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E92C1506

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Sheryl Lux representing the Department; Sandra O'Reilly, Sandra O'Reilly the Appellant, Richard Clark and Stephanie Lawler.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | DDES staff report to the Hearing Examiner for E92C1506 |
| Exhibit No. 2 | Copy of the Notice & Order issued September 26, 1994 |
| Exhibit No. 3 | Copy of the Supplemental Notice & Order issued May 5, 2006 |
| Exhibit No. 4 | Copy of the Notice and Statement of Appeal of Supplemental Notice and Order received May 30, 2006 |
| Exhibit No. 5 | Copies of codes cited in the Notice & Order |
| Exhibit No. 5a | Copy of additional codes pertinent to instant appeal |
| Exhibit No. 6 | Copies of DDES records for building permit B93A2407 |
| Exhibit No. 7 | Copy of building permit 92970 for repair to subject property after landslide |
| Exhibit No. 8 | King County Assessor Records for parcel 3022039084 |
| Exhibit No. 9 | Copies of aerial photos depicting critical areas taken in 2002 |
| Exhibit No. 10a-b | Aerial photographs of subject property taken in 1970 |
| Exhibit No. 11 | Aerial photographs of subject property taken in 1976 |
| Exhibit No. 12 | Aerial photograph of subject property taken in 2004 |
| Exhibit No. 13 | Copies of photographs of subject property taken by Bill Turner in 1992 and Sheryl Lux in 2005 |
| Exhibit No. 14 | Aerial photograph of subject property taken in 2007 |
| Exhibit No. 15 | Appellant report to the Hearing Examiner for E92C1506 |

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